

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JENS ERIK SORENSEN,

Plaintiff,

vs.

METABO CORPORATION, ET. AL,

Defendant.

CASE NO. 08CV304 BTM (CAB)

ORDER GRANTING MOTION TO
STAY

The Court has reviewed the Defendant Metabo Corporation's motion to stay pending reexamination of the '184 patent and concludes that a partial stay is appropriate in this case.

Although Defendant Metabo has asserted improper venue as an affirmative defense, it has indicated in its reply brief that it does not intend to challenge venue.¹ As set forth in the Court's order granting partial stay in Sorenson v. Star Asia, 08cv307, the Court will not stay resolution of threshold procedural questions of jurisdiction and venue. However, in this case, such an exception to a stay will not be necessary if Metabo waives its right to pursue its affirmative defense of venue. Defendant Metabo may file an amended answer which excludes its improper venue defense by July 21, 2008. If Defendant does not amend its answer by that time, the parties may engage in venue related discovery only pursuant to an expedited schedule to be issued by the magistrate judge and Defendant shall file a motion to dismiss for improper venue on or before September 15, 2008. Defendant shall contact chambers the day before filing to obtain a hearing date.

¹ Metabowerke, a German corporation, is named as a defendant and may wish to assert the affirmative defenses of improper venue and lack of personal jurisdiction. Metabowerke, however, has not been served and is not yet a party to the case.

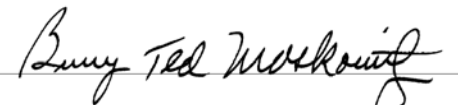
1 The Court grants a stay as to the remainder of the litigation for the reasons stated in
2 the Court's order granting stay in Sorensen v. Black and Decker, 06cv1572, Docket No. 243
3 and on the record at the February 25, 2008 status conference in Sorensen v. Helen of Troy,
4 06cv2278. The Court concludes that a reasonable stay is appropriate in this case because
5 the litigation is in its early stages, Plaintiff has not established undue prejudice, and the
6 reexamination will simplify issues for the Court and save expense for the parties. See, e.g.,
7 Xerox Corp. v. 3Com Corp., 69 F. Supp. 2d 404, 406 (W.D.N.Y. 1999). Contrary to the
8 Plaintiff's arguments, the Court finds that litigation of Defendant's affirmative defenses other
9 than improper venue should be stayed because they may involve determinations on the
10 merits of the case and will involve the parties in unnecessary expense at this stage of the
11 litigation.

12 If it appears that the reexamination will not be effected within a reasonable time,
13 Plaintiff may move to vacate the stay. Defendants are advised to identify and submit any
14 relevant prior art that is not already being considered by the United States Patent Office as
15 soon as possible to facilitate the completion of the reexamination process within a reasonable
16 time period. Additionally, any party may apply to the Court for an exception to the stay if it
17 has specific, valid reasons to believe that it needs to obtain discovery in order to preserve
18 evidence that will otherwise be unavailable after the stay. Defendant is ordered to file a notice
19 informing the Court of the PTO's decision on the pending application for reexamination within
20 10 days of receipt of such decision.

21 For the reasons set forth above, the Court orders a partial stay of this case. All other
22 pending motions in this case are DENIED as premature. Plaintiff may renew these motions
23 after the stay has been lifted. The motion to stay is GRANTED.

24 IT IS SO ORDERED.

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26 DATED: July 8, 2008

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28 Honorable Barry Ted Moskowitz
United States District Judge

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